

ASH Response to the Department of Health’s consultation on draft proposals regarding transposition of Article 20(5) of the EU Tobacco Products Directive 40/2014/EC on the advertising of electronic cigarettes into domestic law.

About ASH

ASH is a health charity set up by the Royal College of Physicians in 1971, working towards the elimination of harm caused by tobacco. ASH receives core funding from the British Heart Foundation and Cancer Research UK and has received project funding from the Department of Health for work to support delivery of the Government’s tobacco strategy for England. ASH does not have any direct or indirect links to, or receive funding from, the tobacco industry. In addition ASH does not accept funding from commercial organisations such as electronic cigarette importers or manufacturers or pharmaceutical companies.

Response

General Comments

1. ASH welcomes the Department of Health’s proposals and overall we believe that they appropriately reflect the EU Directive’s requirements.
2. ASH supports DH’s approach to transposition which takes a minimal approach to the implementation of Article 20(5). We agree that at the current time there is no need for further restrictions or other measures to go beyond the requirements of the Directive.
3. ASH estimated that in March 2015 there were 2.6 million current users of electronic cigarettes in the UK, a tripling of the number of users between 2012 and 2014, but with subsequent growth slowing considerably. This number is almost entirely made of current and ex-smokers; with around 40% having fully replaced smoking with e-cigarette use.¹ The main reason given for use by smokers who currently use electronic cigarettes is to reduce the amount they smoke while ex-smokers report using electronic cigarettes to help them stop smoking. There is little evidence to suggest that anything more than a negligible number of never smokers regularly use the product. Research carried out for ASH also suggests that there is no compelling evidence at the current time to suggest that young people are using electronic cigarettes as a “gateway” to smoking.²
4. On the other hand there is evidence that the relative risks of electronic cigarettes and smoking are not well understood, and that a growing number of smokers and ex-smokers believe that e-cigarettes are equally or more harmful than smoking. The proportion of current and ex-smokers in Britain who believe that e-cigarettes are equally or more harmful than smoking grew from around one in ten in 2012 to nearly one in five by 2014.³ This is of concern as accurately perceiving e-cigarettes as less harmful than smoking predicted current e-cigarette use in never-users, reinforcing the need for clear and balanced information on the relative harm of e-cigarettes and cigarettes.³

¹ Use of electronic cigarettes (vapourisers) among adults in Great Britain. ASH. May 2015.

² Use of electronic cigarettes among children in Great Britain. ASH. August 2015.

³ Brose LS, Brown J, Hitchman S, McNeill A. Perceived relative harm of electronic cigarettes over time and impact on subsequent use. A survey with 1-year and 2-year follow-ups. *Drug and Alcohol Dependence*. 2015 Dec 1;157:106-11. doi: 10.1016/j.drugalcdep.2015.10.014. Epub 2015 Oct 22.

5. Our conclusion from this is that there is no evidence so far that the current advertising regime, under CAP/BCAP rules administered by the ASA, has caused problems, in particular by encouraging the uptake of e-cigarettes by young people and adults never smokers. We believe there is a need for monitoring and surveillance of the impact of the introduction of EU TPD advertising restrictions, to determine whether any revision is needed.

Specific Comments

6. The potential health benefits of electronic cigarettes as a means of helping smokers to cut down and quit smoking are significant. Therefore it is not only appropriate, but indeed essential, for health campaigns and local stop smoking services to develop messaging helping people make the switch from tobacco to e-cigarette use, including by making reference to the devices themselves and providing factual information about them.
7. ASH agrees with the proposal to interpret “press and printed publications” as applying to “newspapers, magazines and periodicals” and to exclude leaflets and posters. This would enable the manufacturers and importers of e-cigarettes to advertise to their customers via direct mail, billboards or at the point of purchase.
8. Annex B to the consultation describes what forms of advertising are prohibited. It would be helpful to use this as the basis for a more detailed guidance document which sets out not only what media communications are prohibited, but also in addition what will still be allowed and how such communications will be regulated. This should cover, as well as cross-border advertising which is prohibited, advertising which is allowed such as billboard and point of sale advertising, direct mail, and information provision by manufacturers and importers on the internet.
9. Further to this, while agreeing in principle to the distinction between “information” and “advertising” we believe that clarification is needed about the distinction between the two. It seems quite probable that a leaflet produced by a manufacturer could contain material that could be deemed to be both a source of information about the product but also promotional in nature and it could be difficult to make a judgment on where “information” ends and “advertising” begins. We do not think that the regulations need changing, however, supporting guidance, either by the DH or ASA, could helpfully provide further clarification about the distinction between “information” and “advertising”.